

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office

**April 23, 2021 through April 29, 2021**

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

**The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.**

F.F., &c., et al. v STATE OF NEW YORK, et al.:

3<sup>RD</sup> Dept. App. Div. order of 3/18/21; affirmation; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; **Constitutional Law--Whether New York State's repeal of the religious exemption to its childhood vaccination requirement (see Public Health Law § 2164), violates the First Amendment or article I, section 3 of the New York State Constitution;** Supreme Court, Albany County, among other things, granted defendants' motion to dismiss the complaint; App. Div. affirmed.

SIMON v FRANCINVEST, S. A., et al.:

1<sup>ST</sup> Dept. App. Div. order of 3/23/21; affirmance and modification; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

**Corporations--Shareholders' Derivative Action--alleged constitutional violations;** Supreme Court, New York County, granted the motions of defendants French-American Surgery Center, Inc. (FASC), French American Clinic, Inc. (FAC), Jean-Francois Simon (Francois), George Kessler, and Lynn Rosenberg to dismiss the claims against them in the third amended complaint pursuant to CPLR 3211, and denied plaintiff's cross motion for partial summary judgment; and thereafter, among other things, denied plaintiff's motion to renew; App. Div. affirmed the 11/14/19 order and modified the 4/13/20 order to grant so much of the plaintiff's motion to renew as was based on the Appellate Division's December 2019 decision in a prior appeal (*Simon v FranInvest, S.A.*, 178 AD3d 436 [1<sup>st</sup> Dept. 2019]) and, upon renewal, denied defendant Kessler's motion to dismiss the eleventh cause of action (the double derivative claim for aiding and abetting fraud), and otherwise affirmed the 4/13/20 order.

U.S. BANK NATIONAL ASSOCIATION, &c. v ROBERT L. GORDONS, LLC:

1<sup>ST</sup> Dept. App. Div. order of 3/25/21 order; reversal, sua sponte examination of 1) whether the App. Div. order grants a new trial or hearing within the meaning of the CPLR 5601(c) and 2) whether the stipulation for judgment absolute is illusory;

**Limitation of Actions--Tolling--Whether this action, commenced after the expiration of the applicable limitations period, was rendered timely by virtue of the tolling provision of CPLR 205(a);**

Supreme Court, New York County, among other things, granted the motion of defendant Robert L. Gordons LLC for summary judgment dismissing the complaint; App. Div. reversed, denied the motion of defendant Robert L. Gordons LLC for summary judgment dismissing the complaint, and remanded the matter for consideration of plaintiff's motion for summary judgment and an order reference on its claim seeking to foreclose on a mortgage.

WILLIAMS, PEOPLE &c ex rel. v BRANN &c, et al.:

2<sup>ND</sup> Dept. App. Div order and judgment of 8/13/21; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

**Habeas Corpus--When Remedy Appropriate;**

App. Div. inter alia, sustained the writ of habeas corpus to the extent of reducing bail on Queens County Indictment No. 30/2020.